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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/765,901	01/07/97	PRAT E	004900-148

1M51/0612

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EXAMINER	
HENDRICKSON, S	

ART UNIT	PAPER NUMBER
1754	

DATE MAILED: 06/12/98

Please find below and/or attached an Office communication concerning this application or pr ceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
765901	Ast
Examiner	**Group Art Unit**
Dickinson	1754

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

P riod for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on 4/8/98.

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disp sition of Claims

☒ Claim(s) 22-46 is/are pending in the application.

Of the above claim(s)____ is/are withdrawn from consideration.

☐ Claim(s)____ is/are allowed.

☒ Claim(s) 22-46 is/are rejected.

☐ Claim(s)____ is/are objected to.

☐ Claim(s)____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number)____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received:____.

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s).____

☐ Notice of References Cited, PTO-892

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Interview Summary, PTO-413

☐ Notice of Informal Patent Application, PTO-152

☐ Other____

Office Acti n Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 29 and 31-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a) In claim 39, "which ... is" is awkward and should be "having ... of".

b) Claim 29 is unclear as to how a "filter cake" can be present in a suspension.

c) In claim 39, "if appropriate" is unclear as to the basis for determining it.

d)The steps of claims 31 and 39 do not appear to agree with the preambles; the effluent of claim 31 step C will apparently yield a solid. A further step of adding water appears necessary (see claims 38 and 41), or perhaps "dissolving" is intended for "deagglomerating".

Claims 22-37 and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chevallier et al. '570.

Chevallier teaches in col. 2 lines 35-45, col. 4 line 20-col. 5 line 25, col. 11 lines 5-20 and col. 22 lines 1-10 reacting silicate and acid (and optionally alumina) in the claimed concentrations, then adding more silicate and acid together to pH 4-6, filtering, ultrasonic deagglomeration and adding water to make a 4% silica solution.

Concernnig claim 39, a quantity is not patentably distinct from "less than" that quantity; see Titanium Metals v. Banner 227 USPQ 773.

Chevallier differs in silica concentration of final product, however suggests that a concentration of about 20% is desirable.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form a silica product in the process of Chevallier having the claimed silica content because doing so makes a concentrated solution which is easy to handle, ship and use efficiently. Concerning claims 34, 35, 42 and 43, the examiner takes Official Notice that the claimed crumbling is old and known in the art; using them is an obvious expedient to perform the deagglomeration taught by Chevallier.

Claim 36 is met when the process is repeated upon a 'heel' portion.

Claims 38 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chevallier et al. '570 as applied to claims 22-37 and 39-45 above, and further in view of Cox et al. Chevallier does not teach washing with organic solvent, however Cox teaches doing so in col. 4 lines 25-40.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to wash the product of Chevallier with organic solvent suggested by Cox because doing so makes a pure material desired by Chevallier.

Applicant's arguments filed 4/8/98 have been fully considered but they are not persuasive. The corrections intended have not been made to all the claims. Concerning "if appropriate", the term does not have the normal meaning of "if possible" which applicants apparently ascribe to it. Merely that it is possible to add a reagent does not mean that it is appropriate to do so. Concerning Chevallier, no patentable distinction in the size of claim 39 is seen, as explained. No differences in the viscosity have been shown. WO '330 is withdrawn.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (703) 308-2539.

MICHAEL L LEWIS
SUPERVISORY PATENT EXAMINER
PATENT EXAMINING GROUP 1700